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10/687,694	10/20/2003	Matthew Murray Williamson	1509-458	2845

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EXAMINER	
MORAN, RANDAL D	

ART UNIT	PAPER NUMBER
2435	

NOTIFICATION DATE	DELIVERY MODE
08/24/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/687,694	WILLIAMSON ET AL.	
	Examiner	Art Unit	
	RANDAL D. MORAN	2435	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 April 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-43 are pending.

This Office Action is in response to Appeal Brief filed 09/17/2008.

Below, Examiner has pointed out particular references contained in the prior art(s) of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claims, other passages and figures may apply as well. Applicant should consider the entire prior art as applicable as to the limitations of the claims. It is respectfully requested from the applicant, in preparing the response, to consider fully each reference in its entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

Response to Arguments

Applicant's arguments, see Appeal Brief, filed 09/17/2008, with respect to the rejection(s) of claim(s) 1-43 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Adolph.

Claim Rejections - 35 USC § 112

The rejection of Claims 1-28 and 43 under 35 USC 112 is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-6, 8, 9, 14-18, 20, 21, 23, 29-35, 38, 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Andersen (US 6,122,740),** hereafter "Andersen," in view of **Alexander Shipp (GB 2 367 714)**, hereafter "Shipp" in view of **Adolph (US 6,356,836)**, hereafter "Adolf".

Considering **Claims 1 and 43,** Andersen discloses during a first time interval (column 8- lines 64-68, column 9- line 1) comparing (a) identities of destination hosts identified in requests to send data from the first host and (b) identities of destination hosts identified in the record (column 6- lines 56-59); automatically transmitting all requests to send data regardless of a result of said comparing (column 5- lines 51-54, see Response to Arguments).

Anderson does not explicitly disclose a method of monitoring propagation of viruses within a network of hosts comprising the steps of storing in a buffer data relating to requests which identify a destination host not in the record.

Shipp discloses a method of monitoring propagation of viruses within a network of hosts (abstract- lines 1-3), comprising the steps of: storing in a buffer data relating to requests which identify a destination host not in the record (p. 12- lines 3-5, once the criterion for

an infected message has been found (i.e. a host not in the record), holding the request in a temporary storage, Andersen- column 5- lines 19-23, the record).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Anderson by storing in a buffer data relating to requests which identify a destination host as taught by Shipp in order to identify patterns characteristic of a virus outbreak and take corrective action (Shipp- abstract).

The combination does not explicitly disclose establishing a record which is at least indicative of identities of hosts within the network to whom data has been sent by a first host ("destination hosts").

Adolph discloses establishing a record which is at least indicative of identities of hosts within the network to whom data has been sent by a first host ("destination hosts") (column 1- lines 40-64).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Andersen and Shipp by establishing a record which is at least indicative of identities of hosts within the network to whom data has been sent by a first host ("destination hosts") as taught by Adolph in order to update data for use in a destination tracking system (Adolph- column 1- lines 6-11).

Considering **Claims 29 and 41, and 42,** Andersen discloses a method of operating a first host within a network of a plurality of hosts comprising the steps of (Fig. 1): over the course of a first time interval (column 8- lines 64-68, column 9- line 1);

comparing identities of destination hosts monitored during the first time interval with destination host identities in a record (column 6- lines 56-59);

Andersen does not explicitly disclose storing data from all sockets which identify destination hosts not in the record.

Shipp does explicitly disclose storing data from all sockets which identify destination hosts not in the record (p. 12- lines 3-5, once the criterion for an infected message has been found, i.e. a host not in the record, holding the request in a temporary storage, Andersen- column 5- lines 19-23, the record).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Andersen by storing data from all sockets which identify data not in the record as taught by Shipp in order to identify patterns characteristic of a virus outbreak and take corrective action.

The combination does not explicitly disclose monitoring creation of sockets within the first host to identify destination hosts identified therein

Adolph discloses monitoring creation of sockets within the first host to identify destination hosts identified therein (column 1- lines 40-64).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Andersen and Shipp by establishing a record which is at least indicative of identities of hosts within the network to whom data has been sent by a first host ("destination hosts") as taught by Adolph in order to update data for use in a destination tracking system (Adolph- column 1- lines 6-11).

Considering **Claim 2 and 32,** the combination of Andersen and Shipp discloses the record is established by monitoring identities of destination hosts to whom requests have been transmitted during a second time interval, which precedes the first time interval (Andersen- column 6- lines 3-13).

Considering **Claims 3 and 31,** the combination discloses the record contains a predetermined maximum number of destination host identities, the maximum number being defined in accordance with a policy (Shipp- p. 11- lines 22-24 and 29, p.13- line 15 and 36-37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combinatation for the benefit of creating a maximum threshold that once exceeded, will result in the flagging of a potential virus (Shipp- p. 13- lines 36-37).

Considering **Claim 4 and 33,** the combination discloses the policy additionally defines a maximum number of destination host identities not in the record, to whom requests may be legitimately transmitted in accordance with policy (Shipp- p.11- lines 22-29, Andersen- column 5- lines 51-54).

Considering **Claim 5 and 34,** the combination discloses the step, at the end of any given time interval, of deleting from the buffer data relating to requests transmitted during the given time interval in accordance with policy (Shipp- p.12- lines 3-5).

Considering **Claim 6,** the combination discloses the step, at the end of the given time interval, of updating the record to reflect identities of hosts identified in requests

which are transmitted in accordance with policy during the given time interval (Andersen- column 8- lines 56-68, column 9- line 1).

Considering **Claim 8,** the combination discloses the stored data is offered in a buffer and includes a copy of a socket created to send data in accordance with a request (Andersen- column 4- lines 63-68, column 5- lines 1-8).

Considering **Claims 9 and 30,** the combination discloses the socket enables identification of at least one application program at whose behest the socket is created (Andersen- column 5- lines 27-34).

Considering **Claims 14 and 28,** the combination discloses said time periods are of equal duration to at least one of said time intervals (Shipp- p. 11- line 26, p. 13- line 1).

Considering **Claim 15,** the combination discloses the step of monitoring the rate of increase in the size of the buffer, and in the event that the rate of increase in the size of the buffer exceeds a predetermined rate, generating a warning (Shipp- p. 13).

Considering **Claim 16,** the combination discloses monitoring the increase in the size of the buffer per time interval, and in the event that the increase in the size of the buffer in any given time interval exceeds the predetermined size, generating a warning (Shipp- p. 11- lines 22-39, p. 13).

Considering **Claim 17,** the combination discloses the step of monitoring the size of the buffer, and in the event that the buffer exceeds a predetermined size for a predetermined number of successive time intervals, generating a warning (Shipp- p. 11- lines 22-39, p. 13).

Considering **Claim 18,** the combination discloses at least one parameter selected from the group consisting of: number of destination hosts in the record; threshold number of requests identifying destination hosts not in the record and defining a state of viral infection, is varied with time (Shipp- p. 11- lines 22-39, p. 13).

Considering **Claim 20,** the combination discloses at least one of the parameters is varied in response to a perceived threat level (Shipp- p. 11- lines 22-39, p. 13).

Considering **Claim 21,** the combination discloses at least one of the parameters is changed between a first set of values and a second set of values at a predetermined rate (Shipp- p. 11- lines 22-39, p. 13).

Considering **Claim 23,** the combination discloses at least one parameter selected from the group consisting of: number of destination hosts in the record; threshold number of requests identifying destination hosts not in the record and defining a state of viral infection, is determined by performing an automated search on a set of data indicative of normal network traffic (Shipp- p. 11- lines 22-39, p. 13).

Considering **Claims 35 and 38,** the combination discloses the step, in the event that the number of socket data items stored exceeds a predetermined value, of storing outgoing packets from the first host (Andersen- column 4- lines 64-67, column 5- lines 1-8, Shipp- p.12- 2-5, p.13).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination by using the socket data from Andersen as a parameter for Shipp to determine if the threshold has been reached.

This would provide the benefit of not only being able to track emails, but allowing the monitoring of the port data itself.

2. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Andersen, Shipp, and Adolph** in view of **Maher, III et al. (US 7,058,974)**, hereafter "Maher."

Considering **Claim 7,** the combination of Andersen and Shipp does not explicitly disclose the step of updating the record to reflect the identity of the predetermined maximum number of destination host identities to whom data has most recently been sent in accordance with policy.

Maher does explicitly disclose the step of updating the record to reflect the identity of the predetermined maximum number of destination host identities to whom data has most recently been sent in accordance with policy (column 7- lines 16-26, the state awareness of the traffic flow is taken to be the most recently sent hosts).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination by updating the record to include the most recent destination hosts as taught by Maher for the benefit of keeping an up to date list of recent session ids to ensurte that the proper linked list information is retrieved (Maher- lines 41-51).

3. **Claims 10-13, 24-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Andersen, Shipp, and Adolph** in view of **Ramanujan (US 5,341,491)**, hereafter "Ramanujan."

Considering **Claims 10 and 12,** the combination discloses allowing the un-impeded passage of data from the first host to other hosts not in the record (column 5, lines 51-54).

The combination does not discloses determining the value of parameter ("slack") based upon a number of successive time periods that pass when no new requests are made to send data from the first host to hosts not in the record; and slack exceeds a predetermined value.

Ramanujan does disclose determining the value of parameter ("slack") based upon a number of successive time periods that pass when no new requests are made to send data from the first host to hosts not in the record (column 2- lines 37-44, the refusal counter holds the variable of mslack); and slack exceeds a predetermined value (column 2- lines 44-48).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination by determining a variable based upon the number of successive attempts that are made to perform an action as taught by Ramanujan for the benefit of being able to generate a response to a predetermined condition such as locking resources of a computer or allowing further network access. Ramanujan discloses incrementing a counter for successive refused attempts to access a network resource. Once the counter reaches a predetermined value, the resource is locked. It would have been obvious to use the same counter in the combination to determine when to allow the unimpeded access to the network.

Considering **Claim 11,** the combination discloses slack is determined based upon the number of successive time periods for which the buffer is empty (Ramanujan- column 10- lines 10-24).

Considering **Claim 13,** the combination discloses the value of slack is decremented each time an un-impeded passage of data from the first host to a host not in the record is allowed (Ramanujan – column 10- lines 39-50, as the lock queue goes from empty to inhabitated the counter is incremented and decremented to determine whether to lock the resource. In the combination, this would cause the variable to be decremented each time data not in the record is allowed passage.)

Considering **Claim 24-27,** are rejected for the same reasons as Claim 10-13 above. It would have been obvious to one of ordinary skill in the art at the time of the invention to perform the same tasks using a multiple recipient email.

4. **Claims 19, 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Andersen, Shipp, and Adolph** in view of **Cunningham et al. (EP 0 986 229).** Cunningham et al. (EP 0 986 229) was submitted in the IDS filed on 5/27/2004.

Considering **Claims 19 and 22,** the combination does not explicitly disclose at least one parameter is varied as a function of the time of day.
Cunningham does explicitly disclose at least one parameter is varied as a function of the time of day (column 5- lines 33-37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination by having a parameter that is varied as a function of time as taught by Cunningham for the benefit of using

parameters in the rule base that are familiar to the users (Cunningham- column 5- lines 33-37).

5. **Claims 36, 37, 39, and 40** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Andersen, Shipp, and Adolph** in view of **Anderson (US 2002/0013858),** hereafter "858."

Considering **Claim 36 and 39,** the combination does not explicitly disclose packets having a designated destination IP address are stored.
858 does explicitly disclose packets having a designated destination IP address are stored ([0046]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination by storing designated IP addresses for the benefit of being able to isolate certain addresses for future use.

Considering **Claim 37 and 40,** the combination does not explicitly disclose the step of establishing the predetermined IP address from the stored socket data.
It would have been obvious to one of ordinary skill in the art at the time of the invention to use the socket data to determine the IP address to be stored.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination to establish the IP address from the stored socket data to use data that is relevant to the network flow to store future packets.

Response to Arguments

Applicant's arguments filed 4/21/2009 have been fully considered but they are not persuasive.

Regarding **Claims 1, 29, and 43,** applicant's arguments have been fully considered but are not persuasive. With respect to applicant's argument that the combination fails to teach "storing in a buffer data relating to requests which identify a destination host not in the record," the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

With respect to applicant's argument that the combination fails to teach "establishing a record which is at least indicative of identities of destination hosts within the network to whom data has been sent by the first host," applicant is directed to Adolph- column 1, lines 40-64. Adolph discloses:

> "a method to record and store a route carried out for the first time with a facility installed in the subject vehicle. When making a new trip along the same route, this recorded information can be reused. This method is intended to simplify the requirements, described in DE 35 12 127 A1, of comparing the current location of the vehicle with stored geographical data for a route which is already known to the subject vehicle. DE 41 05 180 A1 describes an autonomous road guiding system for motor vehicles which contains a device to record the course of a street actually taken and stores the data in a storage unit. Impulses along the route are detected automatically, whereas changes of direction are entered by hand via the push-buttons of the device or via the direction indicator of the vehicle. The storage unit thus programmed can be taken out of the device and given to a third party thus making it possible for the third party to drive along an unknown route

> with the help of the storage unit. One of the problems of this autonomous road guiding system, among others, is that only quite specific road topologies can be saved and updates are not carried out. Thus neither changes in the road topology nor unexpected events between the programming of the storage unit and the trip of the third party are taken into account. Additional problems are encountered in the "calibration" of the geographical data."

Adolph teaches establishing a record which is at least indicative of destination hosts (i.e. known routes) within the network to whom data has been sent by the first host (the network is disclosed within Andersen and Shipp).

In response to applicant's argument that Adolph is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Adolph is pertinent to the particular problem being solved in that it uses previous routes traveled to aid in further trips along the same route by storing previous routes and destinations traveled.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randal D. Moran whose telephone number is 571-270-1255. The examiner can normally be reached on M-F: 7:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on 571-272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. D. M./
Examiner, Art Unit 2435
8/13/2009

/KIMYEN VU/
Supervisory Patent Examiner, Art Unit 2435